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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,392	11/09/2001	Richard M. Davis	285/39093A/395A	1653

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EXAMINER

THOMPSON, MICHAEL M

ART UNIT	PAPER NUMBER
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3763

*7*

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/045,392

Applicant(s)

DAVIS ET AL.

Examiner

Michael M. Thompson

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Information Disclosure Statement*

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892 or a submitted PTO-1449, they have not been considered.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kanner et al. (5,713,242). Kanner et al. teaches all of the limitations of the claims. Applicant should pay particular attention to Figures 2-4. Kanner teaches a carrier member (22), threaded screw structure (18) having first and second ends opposite the first end providing a handle, piston engaged with the second end of the threaded screw structure, housing (12), nut member (20) with partial threads, two link members (24a, 25a), wherein the nut member is engageable and disengageable with the screw member and is configured to move in a plane in a diminishing curved path in traveling between an engaged position and a disengaged position (brief summary).

Art Unit: 3763

He teaches a threaded bore with a pressure gauge (15) (30), latch finger on the carrier member, and at least one raised rib. Furthermore, the radius of the bore receiving the carrier member is larger than a distance from the center line of the distance from the center line of the threaded screw structure to the link structure, which engages the carrier member (Figures). Lastly, he teaches the carrier member having a bore with a radius is not less than the radius of the bore of the fluid displacement chamber. (please note the distal end of the chamber at about the position of reference number 18a) Please note with respect to the bayonet feature of claim 5 it is submitted that this feature is inherent in the ('242) device through the figures and arrangements of the device and in light of the fact that they are substantially the same device construction.

#### *Double Patenting*

4. Claims 1-5 and 8-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 5,713,242. Although the conflicting claims are not identical, they are not patentably distinct from each other because the above mentioned patent claims similarly recite several structurally similar limitations not limiting to structures such as a carrier member, threaded screw structure, housing (12), nut member (20) with partial threads, and two link members (24a, 25a).

#### *Response to Arguments*

5. Applicant's arguments filed December 30, 2003 have been fully considered but they are not persuasive. Applicant contends that Kanner et al. fails to disclose or suggest the housing and carrier member being non-integral distinct components. Therefore, Applicant has requested that

Art Unit: 3763

the rejections of Kanner et al. be withdrawn. The Examiner respectfully disagrees. In the above office action the Examiner represented the carrier member (22) and Figure 3 clearly shows carrier member (22) as a non-integral and distinct component. In addressing the double patenting rejection, it is the Examiners position that the scope of the claims as recited in Kanner et al. clearly encompass non-integral components. In the least, making a device non-integral from an integral device involves only routine skill in the art. *Nerwin v. Erlicnman*, 168 USPQ 177, 179.

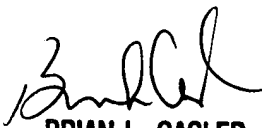
### Contacts

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Michael Thompson whose telephone number is (703) 305-1619. The Examiner can normally be reached on Monday through Friday from 9 am to 5 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Primary, Brian Casler, can be reached on (703) 308-3552. The official fax phone number for submissions to the organization where this application or proceeding is assigned is (703) 872-9302. The official fax phone number for submission of After Final response is (703) 872-9303.

Michael M. Thompson

Patent Examiner

  
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MT 

March 5, 2004